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WASHINGTON, D.C. 20505

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

15 JUL 1976

Dear Mr. Frey:

This is in response to your request for our comments on the Department of Defense's letter of 12 July 1976 expressing its views on our draft bill, "To amend the National Security Act of 1947, as amended, and for other purposes."

The narrow and immediate objective of our draft bill is to elevate the administratively-created position of "Deputy to the Director of Central Intelligence for the Intelligence Community" to the statutory position of "Deputy Director of Central Intelligence for the Intelligence Community," to be appointed by the President with the advice and consent of the Senate. The draft bill is designed to accomplish this narrow purpose, as far as possible, within the framework of existing law and in a way which will be consistent with Executive Order 11905. It is our hope that by keeping the bill simple and direct we can achieve its early and favorable consideration.

We are opposed to the Department of Defense's suggestion that this bill include a provision requiring that at least one of the three positions of Director; Deputy Director, Agency; and Deputy Director, Community, be a commissioned officer. Such a requirement would unnecessarily impinge upon the discretion of the President in the exercise of his appointment powers.

As it now stands, our draft bill is consistent with existing law in requiring only that one of the two Agency leadership positions be occupied by a civilian. Thus, the draft bill would permit two of the three positions in question to be occupied by commissioned officers, whereas existing law permits one of the two positions to be so occupied. It is difficult to see how the Department of Defense could view this as "vitiating the checks and balances presently embodied in the mixed military/civilian leadership of the CIA." Military participation in this leadership is now, and should continue to be, the product of Presidential discretion, not positive law.



Moreover, it should be pointed out that the question of civilian and military leadership was a central issue in the Congress during consideration of the National Security Act of 1947. The legislative history of that Act (P.L. 80-253) and the Act of 1953 (P.L. 83-15) indicates that existing law is a careful compromise arrived at in the face of exceedingly strong sentiment in the Congress that civilian leadership be required for the Central Intelligence Agency just as it was for the Department of Defense. The compromise sought to preserve maximum discretion for the President, while, at the same time, satisfying Congress' insistence that the leadership of central intelligence not be subject to military control. Frankly, we do not think it is the time to re-open these issues. The Department's suggestion is wholly novel, unsupported by any aspect of E.O. 11905, and departs from existing law beyond that which is necessary to accomplish the narrow purpose of this draft bill. Its inclusion in the bill could endanger its chances for early and favorable consideration.

The Department of Defense also suggests certain other enumerated changes to the draft bill. We are opposed to the first suggestion because it is not necessary at this time. Further amendments to the National Security Act and Central Intelligence Agency Act can be addressed later. These will be more appropriate vehicles for providing the Intelligence Community staff with whatever statutory charter may be necessary.

We are opposed to the second suggestion simply because it is unnecessary; and we have decided to delete the fourth sentence of the draft bill, so we will not comment on the third suggestion.

We are enclosing a clean text of the draft bill reflecting certain changes discussed informally with the staff of the Office of Management and Budget.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Enclosure
Distribution:

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A BILL

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To amend the National Security Act of 1947, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 102(a) of the National Security Act of 1947 (50 U.S.C.A. 403(a)) is amended to read as follows:

"(a) There is established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be the head thereof. There shall be two Deputy Directors of Central Intelligence: a Deputy Director of Central Intelligence for the Central Intelligence Agency (Deputy Director, Agency) and a Deputy Director of Central Intelligence for the Intelligence Community (Deputy Director, Community). The Director may, to the extent he deems appropriate and without being relieved of his responsibility, delegate to each of the Deputy Directors any of those authorities vested in him by virtue of his position as Director of Central Intelligence and as head of the Central Intelligence Agency. The Director and the Deputy Directors shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals in civilian life or from among the commissioned officers of the armed services whether in active or retired status: Provided, however, that at no time shall the positions of Director and Deputy Director, Agency, be occupied simultaneously by commissioned officers of the armed services, whether in an active or retired status."

SECTION 2. (a) Section 102(b)(3) of the National Security Act of 1947 (50 U.S.C.A. 403(b)(3)) is amended by striking the words "of Central Intelligence" wherever they appear in that subsection.

(b) Section 3(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C.A. 403c(b)) is amended to read as follows:

"(b) In the exercise of the authorities granted in subsection (a) of this section, the term "Agency head" shall mean the Director of Central Intelligence, or the Deputy Director of Central Intelligence for the Central Intelligence Agency."

(c) Section 5314(35) of title 5, United States Code, is amended by striking the word "Director" and inserting in lieu thereof the word "Directors."

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